

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
SW/8 Pine Hill Avenue at * ZONING COMMISSIONER
Belair Road *
1113 Pine Hill Avenue * OF BALTIMORE COUNTY
11th Election District *
5th Councilmanic * Case No. 92-258-A
Eleanor J. DiCarlo *
Petitioner *

ORDER ON MOTION FOR RECONSIDERATION

This matter came before the Zoning Commissioner as a Petition for Zoning Variance wherein the Petitioner requested relief from Sections 1801.2.C.1 and 1802.2.C.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) as well as certain provisions of the Comprehensive Manual of Development Policies (C.M.D.P.). The Petition also requested an amendment of the first amended final development plan of Cedarside Farms, the subdivision in which the subject property is located. The relief requested was for a proposed dwelling to be constructed in accordance with the site plan submitted with the Petition and marked Petitioner's Exhibit 1. By Order issued February 7, 1992, the Petition was denied.

Subsequently, the Petitioner filed a Motion for Reconsideration requesting further review of an amended proposal. Specifically, the Petitioner submitted a plat and plans which contained significant amendments to the original plan. As resubmitted, the Petitioner now proposes to construct a dwelling that will fit within the permitted building envelope on the subject property. This new plan is marked as Exhibit 1A. Because the proposed dwelling will be within the permitted envelope, the nature of the relief requested is materially altered. In accordance with the new plans, the Petitioner requires only a variance from Section 1801.2.C.1 of the B.C.Z.R. to permit a window to window separation of 28.8 feet in lieu of

the required 40 feet. This will permit the Petitioner to have windows on the rear side of the proposed dwelling.

Upon receipt of the Petitioner's amended plan, a copy of same was forwarded to one of the Protestants who participated in the original hearing. That Protestant, Donald B. Smith, has advised this office that he does not object to the Petitioner's amended plan. Efforts to locate the other Protestant who appeared, David D. Wang, were unsuccessful.

In reviewing the Petitioner's revised plans, I am persuaded that the Motion for Reconsideration should be granted. The placement of the proposed dwelling will be consistent with the surrounding locale and within the spirit and intent of the applicable regulations. Further, I believe that the property owner will suffer significant practical difficulty if the Motion is denied. Clearly, the Petitioner has made every effort to comply with the regulations and strict compliance therewith would not allow the Petitioner to develop the subject property. For the reasons set forth above, I shall grant the Motion for Reconsideration and shall so Order.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 21st day of May, 1992 that a variance from Section 1801.2.C.1 of the B.C.Z.R. to permit a window to window setback of 28.8 feet in lieu of the required 40 feet for a proposed dwelling in accordance with Petitioner's Exhibit 1A, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return,

and be responsible for returning, said property to its original condition.

2) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Ms. Eleanor J. DiCarlo
1108 E. Homberg Avenue, Baltimore, Md. 21221

Mr. Donald P. Smith
4112 Pine Hill Avenue, Baltimore, Md. 21236

People's Counsel; File

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
SW/8 Pine Hill Avenue at * ZONING COMMISSIONER
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Petitioner *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Zoning Variance from Sections 1801.2.C.1 and 1802.2.C.2.b. of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a window to window separation of 22 ft. in lieu of the required 40 ft. and to allow separation of facing building elevations of 22 ft. in lieu of the required 25 ft., respectively. Also requested are variances from certain provisions of the Comprehensive Manual Development Policy, adopted, pursuant to Section 504.2 of the B.C.Z.R. Specifically, a variance from CMDP section V.B.9 is requested to allow a building to right of way setback of 17 ft. in lieu of the required 25 ft.; and from Section V.B.6.B to allow a window to property line distance of 10 ft., in lieu of the required 15 ft. Lastly, the Petitioner seeks to amend the First Amended Final Development Plan of Cedarside Farms. All of these variances are more particularly shown on Petitioner's Exhibit No. 1, the plat to accompany the variance.

The Petitioner/property owner, Eleanor J. DiCarlo, appeared and testified. Also appearing on her behalf was Robert DiCarlo, her son, who will supervise the proposed construction. Appearing as Protestants were Donald D. Smith, a nearby resident who resides at 4112 Pine Hill Avenue, and David D. Wang, the property owner of the adjoining property at 9320 Belair Road.

ORDER RECEIVED FOR FILING
Date 5/21/92
By LES

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By LES

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Date 5/21/92
By LES

The Petitioner testified that she purchased the subject property in November of 1991. The property is triangular in shape and is located immediately next to the intersection of Pine Hill Avenue and Belair Road. The triangular shape of the parcel is due to the acute angle which is formed by the road intersection. The property is currently unimproved, however, the Petitioner desires to construct a dwelling house thereon. The house would be 48 x 24 ft. in dimension. The Petitioner testified that the house will be oriented so as to face Pine Hill Avenue and because of the restricted building envelope due to various setback regulations, the above referenced variances are requested. The Petitioner further indicated that if forced to build within the strictly computed building envelope, a house featuring dimensions of 32 ft. by 7 ft. is all that could be constructed.

After receiving the testimony offered by the Petitioner and reviewing Petitioner's Exhibit No. 1, it was noted that the requested relief did not comport with the evidence presented. Apparently, the Petition was accepted under the incorrect assumption that the dwelling would face Belair Road. In fact, the Petitioner proposes to construct the house so that same will front Pine Hill Avenue. If constructed in the manner in which the Petitioner proposes, only a 10 ft. rear yard setback would be maintained. This is less than the setback required under Section 1802.3.C of the B.C.Z.R. However, a variance from that section is not requested. Thus, the Petition was amended at the hearing so that the relief now requested is from all applicable setback distances which might be required in order to construct the house in a manner shown on the site plan.

In opposition to the request, both Mr. Smith and Mr. Wang testified. Mr. Smith identified himself as an architect and noted that he lived across

the street from the property on Pine Hill Avenue. He noted that most of the other lots in the area are of more substantial size and that this is an irregularly shaped and subsized lot within the community. He also offered Protestant's Exhibit No. 1, an alternative site plan for the property. Within this rendering, Mr. Smith demonstrated that the Petitioner could construct a house containing the same internal square footage as proposed, and within the building envelope, if same were oriented toward Belair Road. In Mr. Smith's view, the proposed construction is incompatible with the surrounding locale and the Petitioner has not satisfied her burden of proving practical difficulty in that other alternatives are available to her which would not require a variance.

Mr. Wang also testified and indicated that he leases his property and does not reside therein. He agreed with Mr. Smith that the house should face Belair Road, so as to provide a uniform appearance with all of the houses in the area. He also noted that possible improvements to Pine Hill Avenue and Belair Road are pending within the State Highway Administration. If these improvements are undertaken, the Petitioner's lot would be further reduced in size, thereby making the setbacks even more substandard.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and

3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

In reviewing the evidence, there is insufficient evidence to allow a finding that the Petitioner would experience practical difficulty or unreasonable hardship if the requested variance was denied. The testimony presented by the Petitioner was in support of a matter of a preference rather than of the necessity for the variance. The Petitioner has failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. Therefore, the variance requested must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 21st day of February 1992 that, pursuant to Petition for Zoning Variance, a variance from Sections 1801.2.C.1 and 1802.2.C.2.b. of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a window to window separation of 22 ft., in lieu of the required 40 ft., and to allow separation of facing building elevations of 22 ft., in lieu of the required 25 ft., respectively, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that variances from certain provisions of the Comprehensive Manual Development Policy, adopted, pursuant to Section 504.2 of the B.C.Z.R., specifically, a variance from CMDP section V.B.9

requesting to allow a building to right of way setback of 17 ft. in lieu of the required 25 ft., be and is hereby DENIED; and,

IT IS FURTHER ORDERED that a variance from Section V.B.6.B to allow a window to property line distance of 10 ft., in lieu of the required 15 ft. and to amend the First Amended Final Development Plan of Cedarside Farms, in accordance with Petitioner's Exhibit No. 1, be and is hereby DENIED.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES/mnn

ORDER RECEIVED FOR FILING
Date 5/21/92
By LES

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Date 5/21/92
By LES

ORDER RECEIVED FOR FILING
Date 5/21/92
By LES

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning
111 West Chesapeake Avenue
Towson, MD 21204
(410) 887-3353
January 27, 1992

Ms. Eleanor J. DiCarlo
1108 East Homberg Avenue
Baltimore, MD 21221

RE: Item No. 274, Case No. 92-258-A
Petitioner: Eleanor J. DiCarlo
Petition for Variance

Dear Ms. DiCarlo:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a review by Zoning personnel.

Zoning Plans Advisory Committee Comments
Date: January 27, 1992
Page 2

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys and/or engineers who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the loss of filing fee.

Very truly yours,

James E. Oyer
JAMES E. OYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning
111 West Chesapeake Avenue
Towson, MD 21204
(410) 887-3353

Your petition has been received and accepted for filing this

27th day of December, 1991.

Arnold Jablon
ARNOLD JABLON
DIRECTOR

Received By:

James E. Oyer
Chairman,
Zoning Plans Advisory Committee

Petitioner: Eleanor J. DiCarlo

Petitioner's Attorney:

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: January 21, 1992
Zoning Administration and
Development Management

FROM: Gary L. Kerns, Chief
Comprehensive and Community Planning
Office of Planning and Zoning

SUBJECT: DiCarlo Property, Item No. 274

In reference to the Petitioner's request, the staff offers the following comments:

Should the applicant's request be granted, architectural drawings should be submitted for review by the deputy director of the Office of Planning and Zoning to ensure that any development is compatible with the homes in the immediate vicinity of the subject property.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

Report prepared by:

Jeffrey Long
Jeffrey Long

PK/JL/rdn
ITEM274/TXTROZ

Baltimore County Government
Fire Department

700 East Joppa Road Suite 901
Towson, MD 21204-5500

(301) 887-4500

JANUARY 6, 1992

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: ELEANOR J. DICARLO

Location: #4113 PINE HILL AVENUE

Item No.: 274 Zoning Agenda: JANUARY 7, 1992

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *James E. Oyer* Noted and Approved
Planning Group
Special Inspection Division Fire Prevention Bureau

JP/REK

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: January 18, 1992
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting
for January 7, 1992

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for Items 258, 274, 272, 273 and 275.

For Case No. R-92-241 we have no comments.

Robert W. Bowling
ROBERT W. BOWLING, P.E., Chief
Developers Engineering Division

RWB:s

92-258-A 2-4

BUREAU OF TRAFFIC ENGINEERING
DEPARTMENT OF PUBLIC WORKS
BALTIMORE COUNTY, MARYLAND

DATE: January 29, 1992

TO: Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management

FROM: Rahee J. Famill

SUBJECT: Z.A.C. Comments

Z.A.C. MEETING DATE: January 7, 1992

This office has no comments for item numbers 258, 272, and 274.

Rahee J. Famill
Rahee J. Famill
Traffic Engineer II

RJF/lvd

Baltimore County Government
Zoning Administration
Office of Planning and Zoning

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

March 26, 1992

Mrs. Eleanor J. DiCarlo
Mr. Robert DiCarlo
1108 E. Homberg Avenue
Baltimore, Maryland 21221

RE: Case No. 92-258-A
4113 Pine Hill Avenue

Dear Mrs. DiCarlo and Mr. DiCarlo:

This is to acknowledge receipt of your recent letter and to follow up on our telephone conversation regarding the above property and Petition for Zoning Variance.

I have accepted your letter as a Motion for Reconsideration of my Order dated February 7, 1992. As I read your letter, you have materially altered your proposal for the subject property. Although the proposed house will still face Pine Hill Avenue, it has been reconfigured within the building envelope so as to eliminate many of the variances which you have requested. At this time, you are requesting only one variance that being from Section 1801.2.C.1 of the B.C.Z.R. to allow a window to window separation of 28 ft. 8 inches, in lieu of the required 40 ft. This is requested in order that windows may be placed on the rear side of the proposed dwelling.

In considering your request, I believe it appropriate that the Protestants, who were involved at the hearing on this matter, be afforded the opportunity to review and comment on your proposed revisions. Thus, I am sending a copy of your letter, with enclosures, to Mr. Smith and Mr. Wang. By a copy of this letter, I am requesting that they inform me, in writing, of their comments and advise if they wish for a hearing to be held in order for them to make known their concerns. I would ask that they respond to me, in this regard, within 15 days from the date of this letter so that a prompt decision can be made.

Very truly yours,

Lawrence P. Smith
Lawrence P. Smith
Zoning Commissioner

LES:mmn

att.

cc: Mr. Donald P. Smith
cc: Mr. David D. Wang

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

March 26, 1992 (110) 885-1386

Mr. Donald P. Smith
4112 Pine Hill Road
Baltimore, Maryland 21236

Mr. David D. Wang
9320 Belair Road
Baltimore, Maryland 21236

RE: Case No. 92-258-A
4113 Pine Hill Avenue

Gentlemen:

Attached is a copy of a letter sent to Mrs. Eleanor J. DiCarlo and Mr. Robert DiCarlo, her son, together with a letter from Mrs. DiCarlo and attachments, regarding the above captioned case, all of which, I believe, is self explanatory. These letters and documents are being sent to each of you, in order to afford you the opportunity to make known your concerns.

I would appreciate you informing me, in writing, within 15 days from the date of this letter, regarding your comments and advise if you wish a hearing to be held in this matter.

Very truly yours,

Lawrence E. Schmidt
Lawrence E. Schmidt
Zoning Commissioner

LES:mmm
encls.
cc: Mrs. Eleanor J. DiCarlo, et al

SMITH ARCHITECTS

ARCHITECTURE PLANNING INTERIOR DESIGN

7 April, 1992

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

Att: Lawrence E. Schmidt,
Zoning Commissioner

Re: Case No. 92-258-A
4113 Pine Hill Avenue

Commissioner Schmidt,

Regarding your letter of 26 March, 1992, I wish to advise that I am pleased with the revised scheme and house design proposed by the DiCarlo's in letter of 25 February, 1992. It would appear that the recommendations offered by myself have been adopted.

Under the circumstances, I see no reason to hold another hearing. We encourage you to look favorably upon their revised request, and look forward to welcoming the DiCarlo's to our neighborhood.

Sincerely yours,

Donald D. Smith
Donald D. Smith,
4112 Pine Hill Road

cc: DiCarlo

1010 SAINT PAUL STREET • BALTIMORE, MD 21202-2661 • (301) 685-4900 • FAX (301) 685-4730

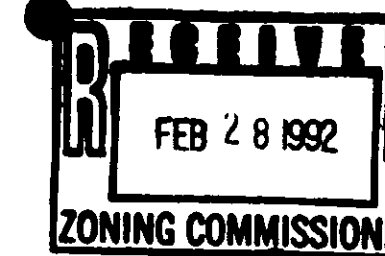
Honorable

Lawrence E. Schmidt

Balto. County Zoning Commissioner

400 Washington Ave. - Suite 113

Balto. Md. 21204



4113 Pine Hill Ave.

Case No. 92-258-A

Dear Mr. Schmidt,

I would like to request reconsideration of your decision in the above mentioned case. As a result of the hearing I have redesigned my proposed dwelling to fit well within the building envelope. Also, due to the proposed increase of the rear yard footage from 10 feet to now reflect 16 feet all other previous variances that were asked for will not apply except with the one exception of 1801.2.C.1 of the B. C. Z. R. to allow A window to window separation of 28 feet 8 inches in lieu of the required 40 feet in order to have windows on rear side. I was also advised by the Zoning office that the rear yard set back requirement 1802.3. C of the B.C.Z.R. of 30 feet only applies to small lot subdivisions. My property is part of Cedarside Farm. Also stated to me by Zoning was I am allowed a 15 foot building to property line set back. The final development plan also shows that the dwelling may face either street. My opportunity to appeal expires in 30 days from Feb.7,1992 which is on Monday March 9,1992. If there is any way you might reconsider this amended request or inform me so I may still appeal if necessary by that date I would sincerely appreciate it. Enclosed is a revised plat of the property in question in Cedarside Farm. Thank you for your kind consideration.

Eleanor J. DiCarlo
Eleanor J. DiCarlo
1108 E. Homberg Ave.
Balto. Md. 21221 686-1488

PS. Please note the variance case reflects a typographical error in the address. It is not 1113 rather 4113 Pine Hill Ave.

PLEASE PRINT CLEARLY

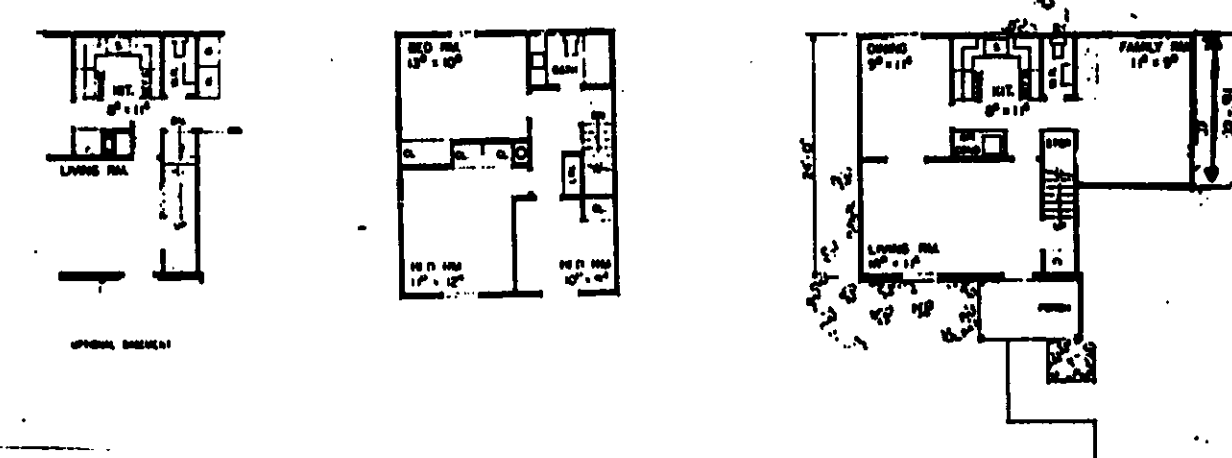
PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
<i>Eleanor J. DiCarlo</i>	<i>1108 E. Homberg Ave.</i>
<i>Walt DiCarlo son</i>	

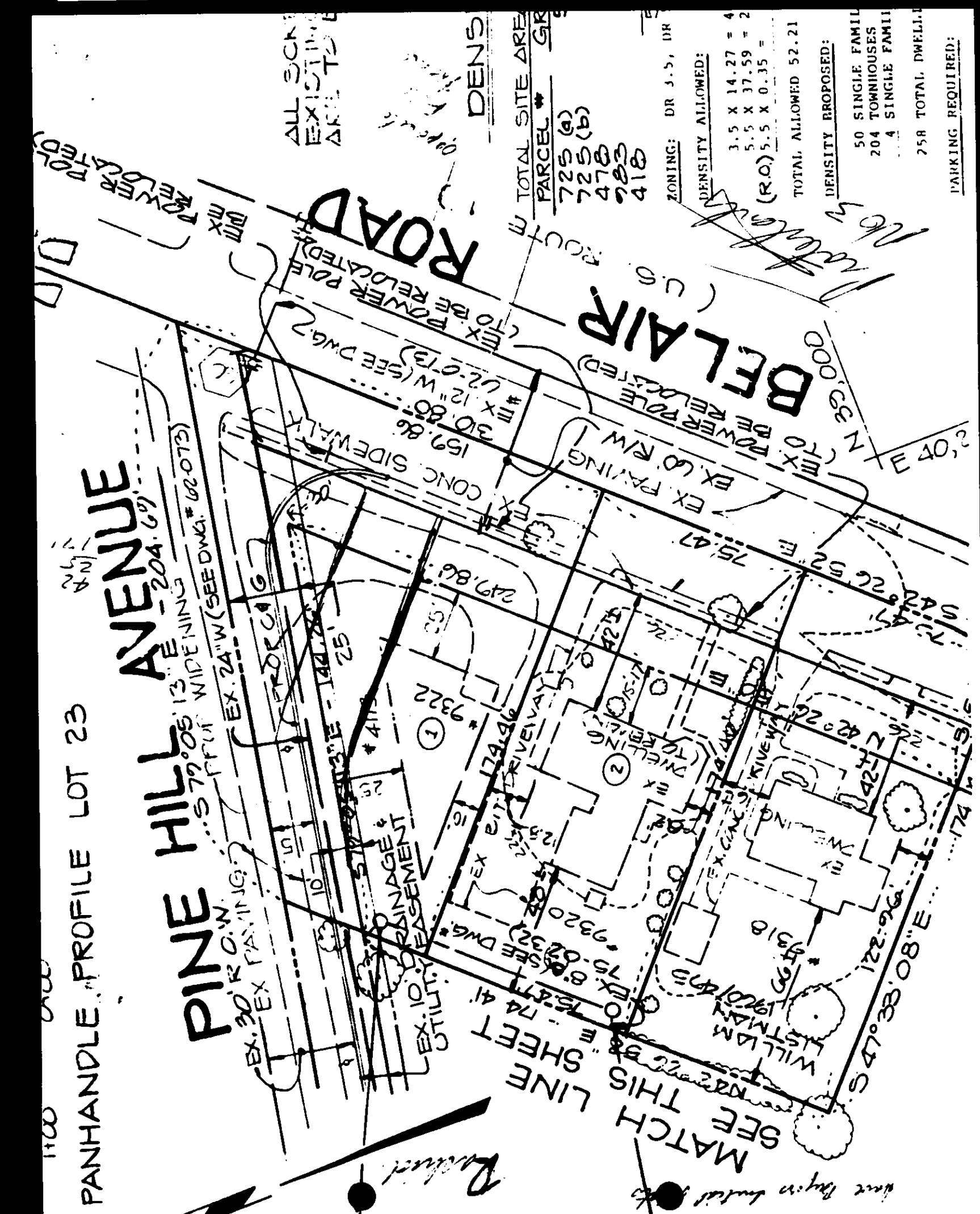
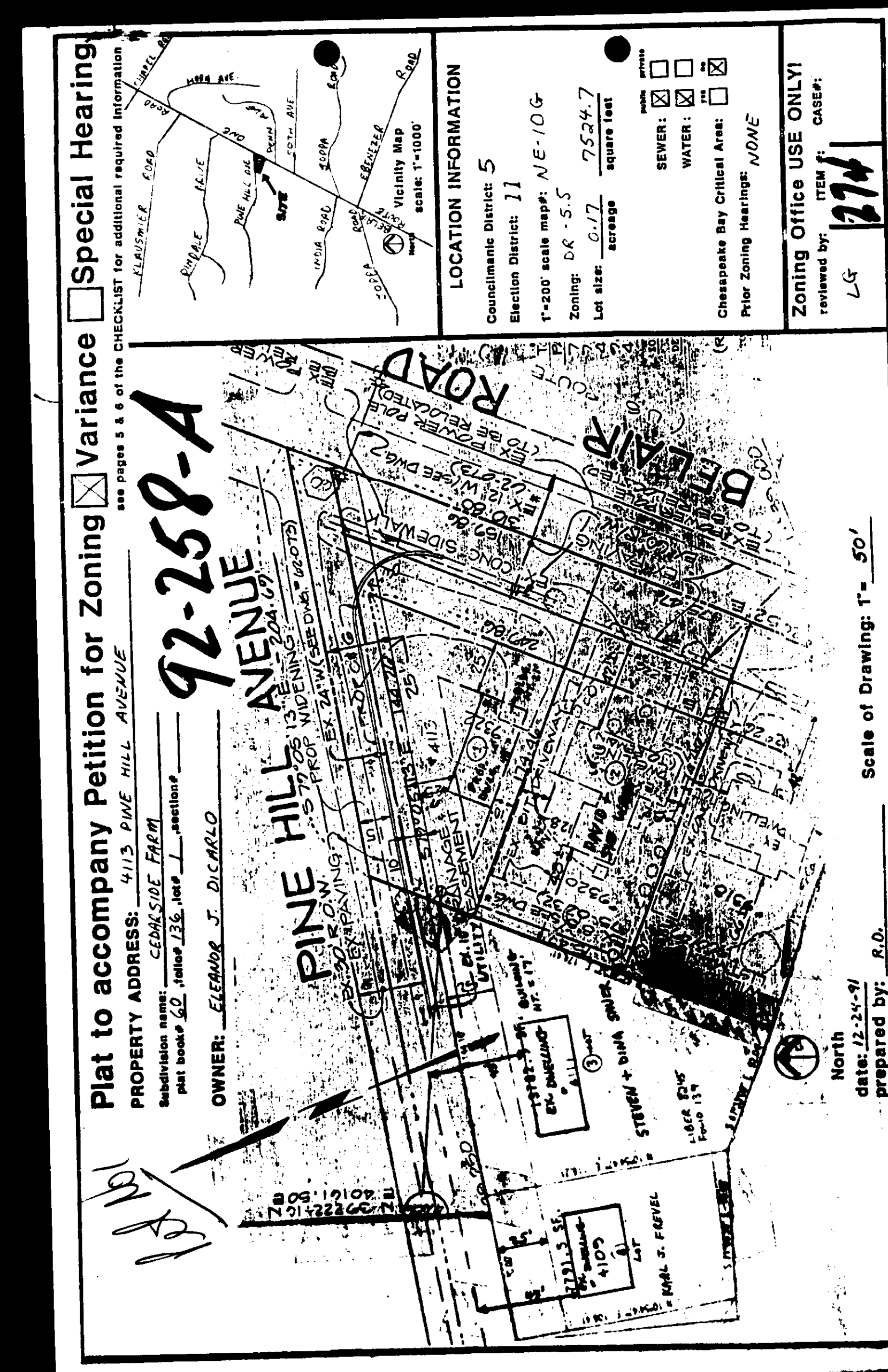
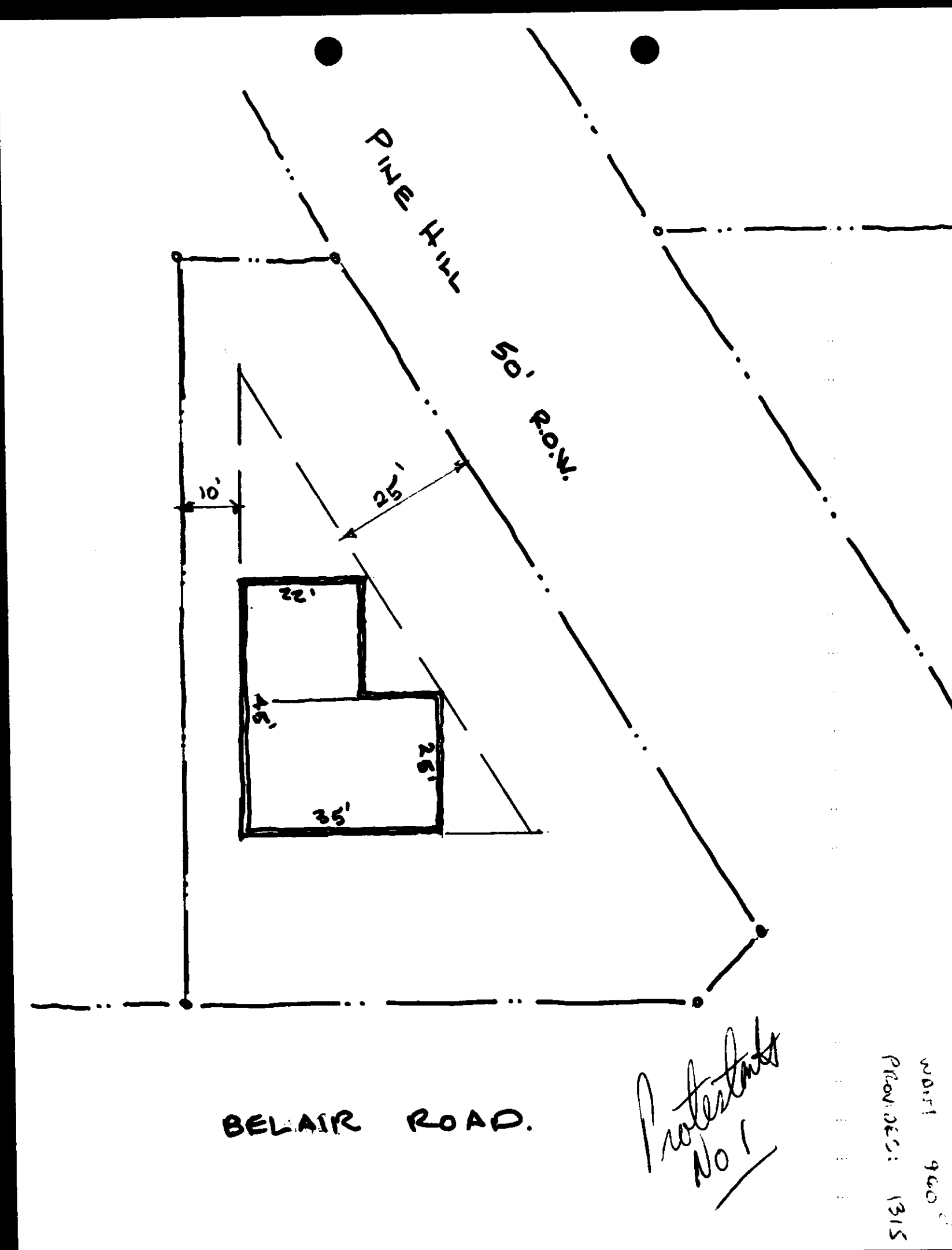
PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
<i>Donald P. Smith</i>	<i>4112 Pine Hill Rd.</i>
<i>David D. Wang</i>	<i>9320 Belair Rd.</i>
	<i>21236</i>

PROPOSED HOME



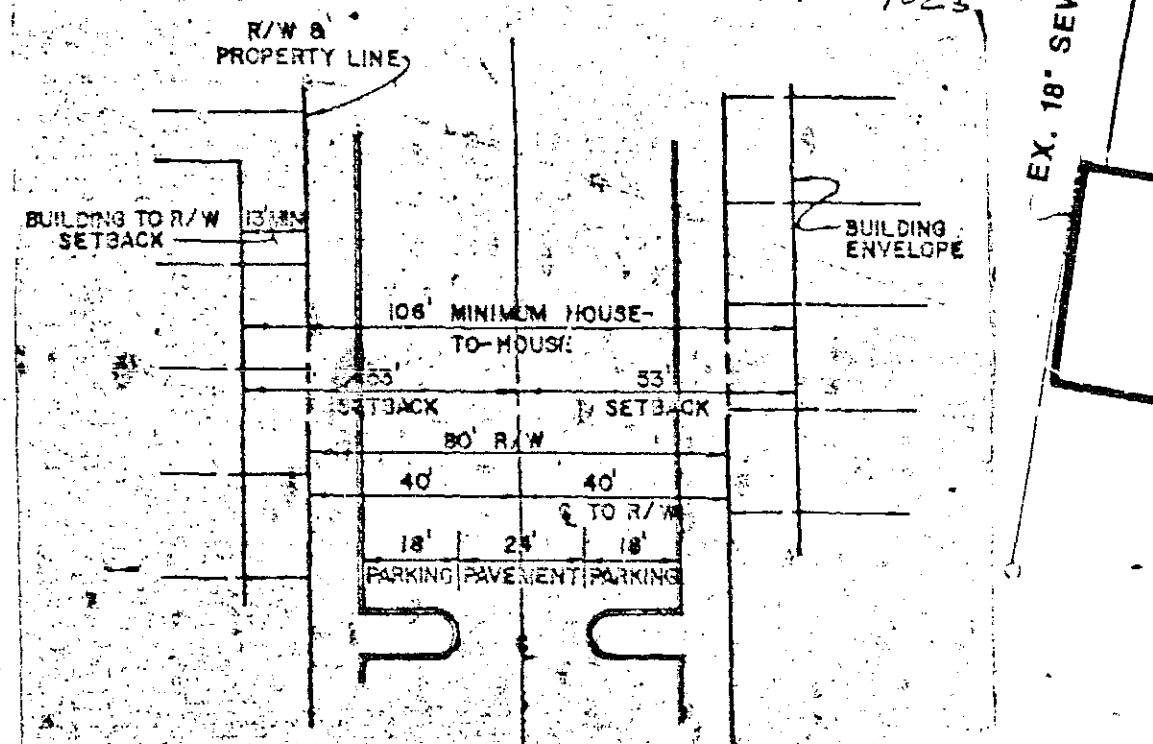
FAMILY ROOM - 12'x16' = 192
1ST FLOOR - 24'x24' = 576
2ND FLOOR - 26'x24' = 624
1392 S.F. TOTAL



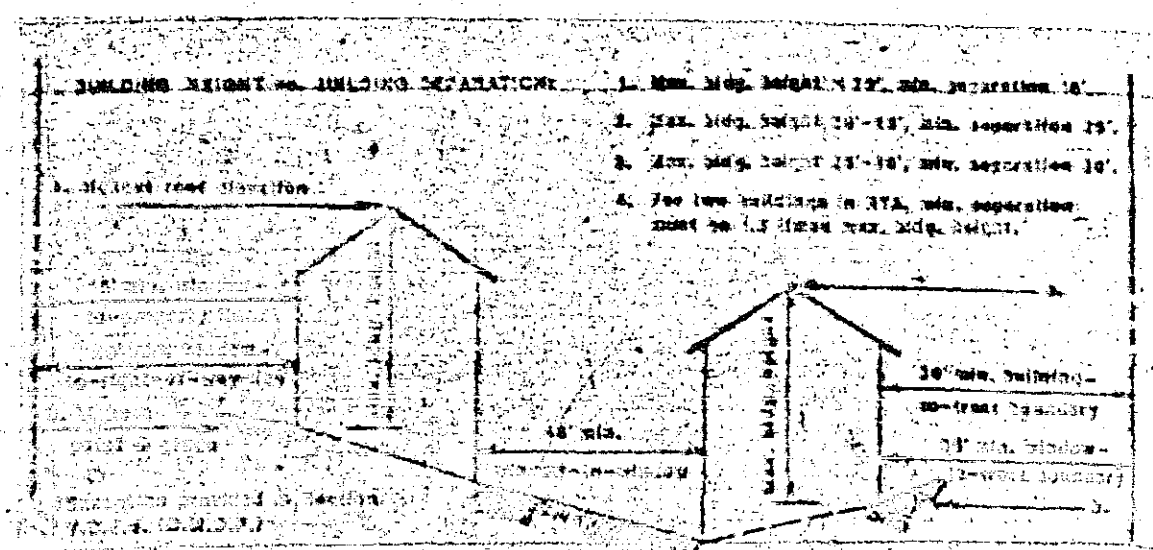
LEGEND

EXISTING

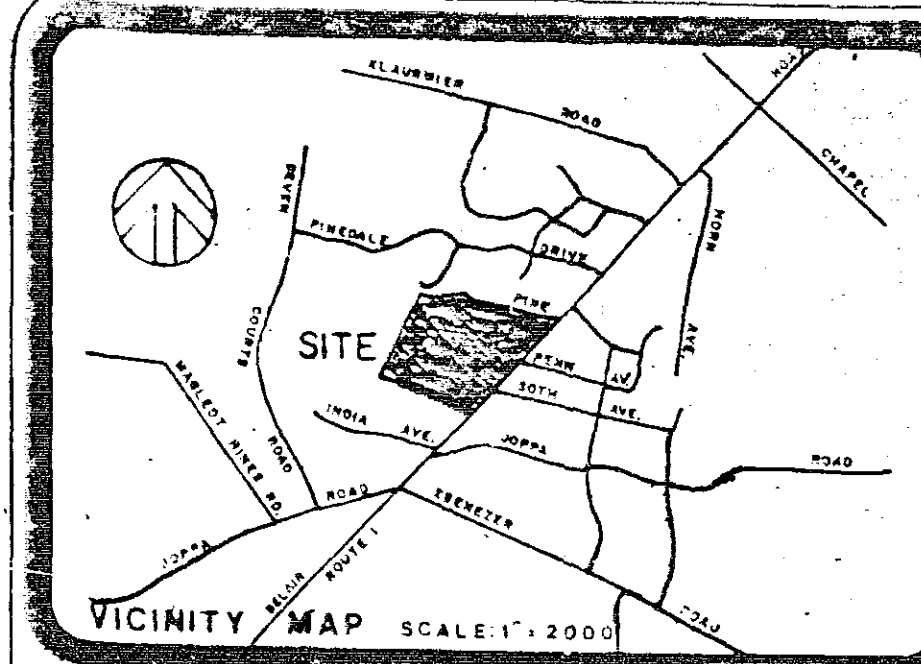
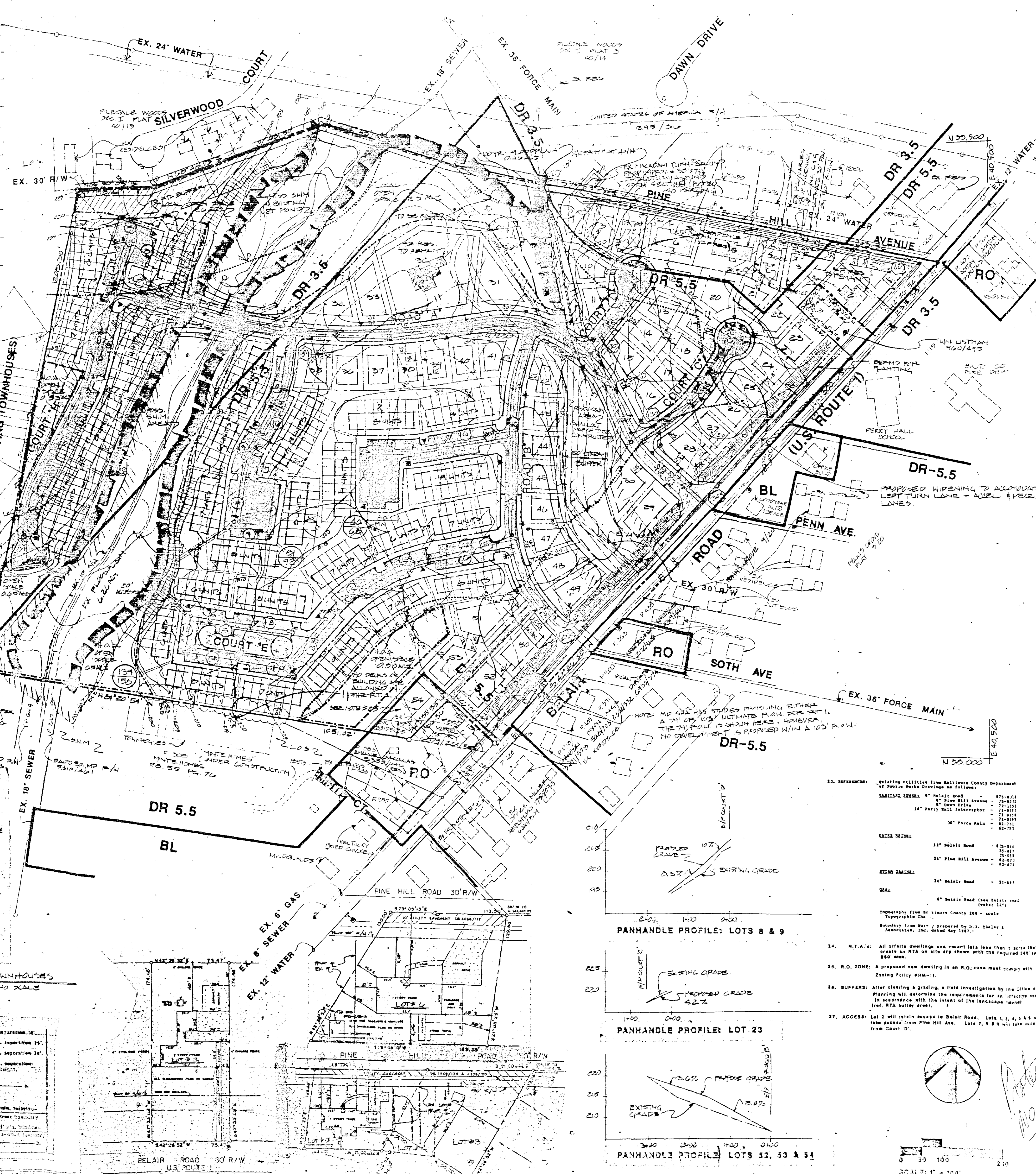
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R/W, PARKING & SETBACK DETAIL FOR TOWNHOUSES



ELEVATION & SET BACK DETAIL



GENERAL NOTES:

- [illegible]

[illegible]

OWNER/DEVELOPER
WINGMASTER HOMES
PO BOX 719
SHELTON CT
GREENBELT, MARYLAND 20770
7300 220-1117

**C.R.G.
PLAN**

CEARSIDE FARM
formerly 'HAMBOND PROPERTY'

J.S. THALER & ASSOC., INC.
SURVEYORS
LAND PLANNERS
VIL ENGINEERS
LANDSCAPE ARCHITECTS
1 WARREN ROAD
BALTIMORE, MD. 21208

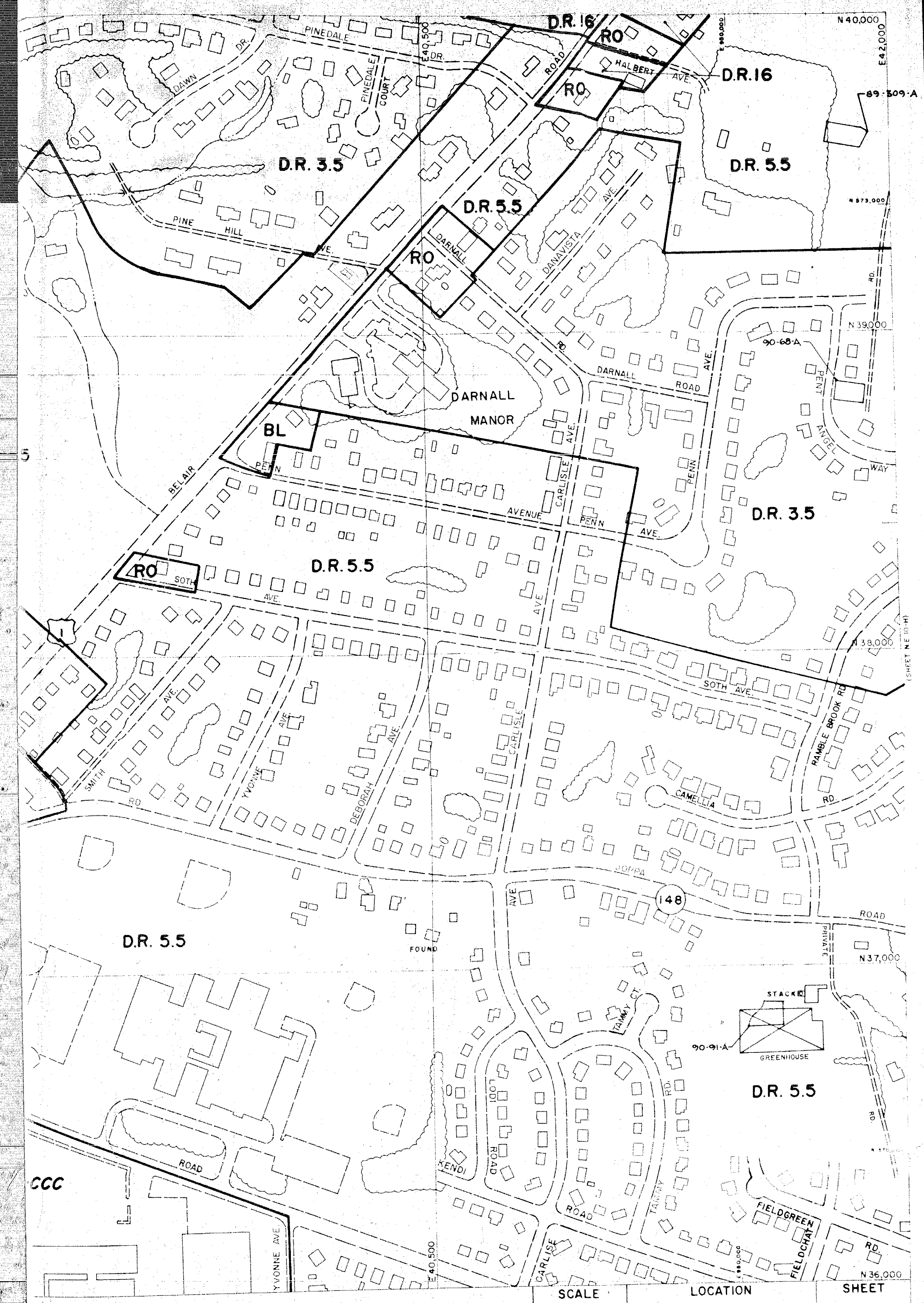
PROJECT No. FD
SHEET No. 1



E COUNTY NING AND ZONING PHIC MAP

SCALE 1" = 200' ±	LOCATION PERRY HALL	SHEET N.E. 10-G
DATE OF PHOTOGRAPHY JANUARY 1986		

92-258-A #274



OUNTY AND ZONING ING MAP

SCALE 1" = 200' ±	LOCATION PERRY HALL	SHEET N.E. 10-G
DATE OF PHOTOGRAPHY JANUARY 1986		

92-258-A #274